

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BUCKWARD DIGITAL SERVICES, §
INC., *et al.*, §
Plaintiffs, § § CIVIL ACTION NO. H-05-1728
VS. §
MILLAR INSTRUMENTS, *et al.*, §
Defendants. §

MEMORANDUM AND ORDER

Pending before the Court is Plaintiffs' motion to modify the Court's Order of February 17, 2006 (Docket No. 47). Plaintiffs point out that a duly issued copyright registration constitutes *prima facie* evidence of copyright validity and shifts the burden of proof to Defendants to provide evidence supporting a finding of invalidity. Plaintiffs argue that, because the parties do not dispute the issuance of a registered copyright, Plaintiffs should not be required to present additional evidence of validity until Defendants have filed a motion for summary judgment and offered evidence to support that motion.

Plaintiffs are correct. The evidentiary hearing regarding copyright validity, set for April 7, 2006, is hereby **CANCELLED**. The Court declines to resolve the issue of copyright validity in the absence of a summary judgment motion filed by any party. The Court notes, however, that this action remains bifurcated and that damages discovery is therefore premature at this time.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 8th day of March, 2006.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**